

DECISION MEMORANDUM

**TO: COMMISSIONER KJELLANDER
COMMISSIONER REDFORD
COMMISSIONER SMITH
COMMISSION SECRETARY
COMMISSION STAFF
LEGAL**

**FROM: KARL T. KLEIN
DEPUTY ATTORNEY GENERAL**

DATE: JUNE 13, 2014

**SUBJECT: IDAHO POWER'S PETITION FOR DECLARATORY RULING
REGARDING OFF-STREET LIGHTING OBLIGATIONS; CASE NO. IPC-E-
14-10**

On May 20, 2014, Idaho Power Company petitioned the Commission for a “declaratory ruling determining Idaho Power’s rights and obligations specific to its duty to provide off-street lighting under I.P.U.C. No. 29, Tariff No. 101, Schedule 15, Dusk to Dawn Customer Lighting (“Schedule 15”) and specifically, whether Idaho Power has a duty to find a technology to provide off-street lighting under Schedule 15 in a manner that does not allow for light to shine on another's property.” Petition at 1-2. The Company filed the Petition in response to an ongoing lawsuit in which the plaintiff/homeowner claims the Company is providing off-street lighting to one customer in a manner that sheds nuisance-levels of light on the plaintiff/homeowner’s property. The Court has indicated that if the homeowner proves the Company’s light is a nuisance, the Court may order the Company to abate the nuisance. The sole issue at this decision meeting is whether the Commission would like to accept or decline jurisdiction over the Company’s Petition.

BACKGROUND

The Company provides Dusk to Dawn, off-street lighting service to residential customers under Schedule 15. The Company currently provides that service to a Boise customer through a pole-mounted streetlight in the alley between the customer’s and plaintiff/homeowner’s homes. The plaintiff/homeowner has sued the Company in court because the light shines in his backyard at night. He asks the Court to rule that the light is a nuisance that must be abated. *See* Complaint (Attachment A to Petition).

In response, the Company argues that the light has operated since 1988, no one but the plaintiff/homeowner has complained about it, and even the homeowner didn’t complain until 2012.

Further, the Company has attempted to address the homeowner's complaint by shielding the light, painting it black, directing it downward, decreasing the wattage by half, and installing a dark-sky fixture. Nevertheless, the homeowner remains unsatisfied. *See* Petition at 3-6.

The Company also moved the Court to dismiss the homeowner's lawsuit on the grounds that the Company's conduct is not a nuisance because the Idaho Public Utility Law authorizes that conduct to occur. In summary, the Company argued that the law requires it to serve customers and empowers the Commission to regulate that service. Further, the Commission has regulated the service by approving Company Schedule 15—Dusk to Dawn Lighting—which specifies that “those services are provided by luminaries mounted on poles owned [or approved] by Idaho Power” and that the “facilities for supplying the lighting are supplied, installed, owned and maintained by Idaho Power in accordance with its standards and specifications.” *Id.* at 5. Despite these arguments, the Court denied the Company's motion and set the case for trial.

At the hearing where it denied the motion, the Court made some comments that worry the Company. Specifically, the Court said that if the homeowner proves his nuisance claim at trial, the Court would not order the Company to shut the light off; but the Court might order the Company to fix the light so it does not unreasonably shine in the homeowner's yard. *Id.* at 6. The Company says it knows of no currently available lighting fixture that would solve the issue of which the homeowner complains. *Id.* at 9, fn 1. The Company has thus petitioned this Commission to rule that “Idaho Power has a legal duty to provide [off-street lighting] services under Schedule 15” but “does not have a duty under Schedule 15 to find a technology to provide off-street lighting in a manner that prevents light from shining on another's property.” Petition at 3 and 9.

COMMISSION DECISION

Would the Commission like to accept or decline jurisdiction over the Petition? If the Commission accepts jurisdiction, then it can issue a notice of petition setting an appropriate comment period. The trial initially was scheduled for July 7, 2014, but it has been rescheduled to August 27, 2014 (with an August 20, 2014 pre-trial conference).



Karl Klein
Deputy Attorney General

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